



House Bill 122

An Act Generally Revising Provisions Related to Federal Tax Qualification of the Retirement Systems Administered by the Public Employees' Retirement Board

The retirement systems administered by the Board are tax-qualified retirement systems under 401(a) of the federal Internal Revenue Code. Contributions into tax-qualified retirement systems, and the earnings associated with those contributions, are tax-deferred. If a system is determined by the IRS to not be qualified, the contributions and earnings for that system will be immediately subject to taxation.

House Bill 122 addresses statutory amendments required to ensure the retirement systems administered by the Public Employees' Retirement Board remain tax qualified plans. The proposed legislation was reviewed by the State Administration and Veterans' Affairs Interim Committee.

The federal government reviews governmental plans for qualification through a process called Cycle C filing. The Board submitted its Cycle C filings in October 2008. In May 2012 we were notified that the IRS would only approve our plans as qualified if we (1) amend the definition of normal retirement age to be based on either age or a combination of age and service, but not membership service alone; and (2) specifically state in law that retirement benefits are non-forfeitable at normal retirement age.

Section 1 of the bill addresses the 1st requirement by amending the definition of "normal retirement age" for all systems administered by the Board. Sections 6 through 12 (pp. 16 – 19) address both requirements for each system administered by the Board. With these amendments, "normal retirement age" will contain an age component and our law will clearly state that members are eligible to receive their retirement benefit upon normal retirement age – the benefit is non-forfeitable at normal retirement age. Members have always been eligible for retirement benefits at normal retirement age. So, this is not a change to the law – only a clear statement of existing law as required by the IRS.

There are a few other amendments in this Bill that have been recommended by independent tax counsel to ensure our plans remain qualified. For instance, section 3, pp. 12 and 13 applies to a Public Employee Retirement System Defined Contribution (DC) member who is on USERRA leave and receiving differential pay from the member's employer. The amendment clarifies that the differential pay received is added to the member's compensation for purposes of determining the cap on contributions that can be paid into the member's DC account.

The amendment to Section 4 on p. 15 clarifies that after tax-contributions in a member's retirement account can be rolled to a defined contribution plan, a qualified defined benefit plan or an annuity contract under section 403(b), but only if the receiving account separately accounts for the after-tax contributions and earnings on those amounts for tax purposes.

Finally, starting FY2015 Governmental Accounting Standards Board (GASB) Statement 68 will require employers to report their net pension liability on their financial statements and provide additional retirement-related disclosures in their financial reports. This will require information and reports from the Board's actuary. Pursuant to an amendment in the House, the Retirement Board will cover the estimated initial set-up cost of \$40,000 and annual \$20,000 costs for these reports as part of its administrative expenses.

The table distributed to the Committee at the start of the hearing provides a section-by-section summary of Board's proposed changes. I'd be happy to address any questions regarding the table or my testimony today.

On behalf of the Public Employees' Retirement Board, I encourage a "do pass" on HB 122

Montana Public Employee Retirement Administration

2013 Qualification Bill

March 2013

Current Code Section	Proposed Change	Reason	Notes	
19-2-303 pp.5	Amend definition of "normal retirement age" to eliminate NRA based on service only	Internal Revenue Service requirement	Non-forfeitable benefit based on service alone still exists	
19-2-405(7) pp.8-9	Add language addressing creation of employer's actuarial study per GASB Rule 68.	Starting FY15, GASB requires employers to report their net pension liability on their financial statements and provide additional retirement-related disclosures in their financial reports. This will require information and reports from the Board's actuary.	House amended Bill to remove language transferring actuarial costs to employers. Costs will be included in Board's administrative expenses.	
19-2-1001(12)(e) pp.12-13	Add language including differential pay for uniformed officers	IRS requirement		
19-2-1001(13)(a) p.13	Allow 415 limitations to apply pre and post January 1, 2009	Eliminate 415 violations that were unanticipated in 2011 legislation.	2011 changes to application of section 415 benefit limits should be applied retroactively to retirees who retired prior to age 60 with a full benefit prior to January 1, 2009.	
19-2-1001 (13)(d)(2)(b)(III) p. 14	Eliminate "30 year treasury rate"	Recommendation of tax counsel	26 CFR 1.417 may change source of rate used (currently uses 30 year treasury securities)	
19-2-1011 pp.14-15	DC Plans, qualified DB plans and annuity contracts must all separately account for transferred amounts	Recommendation of tax counsel	Drafting error from 2011 – currently says only annuity contracts must account for transfers separately	

19-2-1014 p. 16	Reference relevant section in USERRA	Recommendation of tax counsel – current reference (401(a)(37) reference 414(u)(9), but IRS wants direct reference to 414(u)(9)	Drafting error from 2011	
19-3-901 p. 16 19-5-501 pp.16-17 19-6-501 p. 17 19-7-501 p.17 19-8-601 pp.17-18 19-9-801 p.18 19-13-701 pp.18-19	Amend definition of “normal retirement age” to eliminate NRA based on service only; clarify that benefit eligibility based on age, service, or a combination are all non-forfeitable benefits	Required by IRS for Cycle C qualification approval		
19-50-104 p. 19	Address Normal Retirement Age changes as they impact 457 catch-up	NRA changes required by IRS in order to remain qualified. Changes impact 457 plan for catch-up purposes.	**NRA in 457 Plan Doc refers to the unreduced DB benefit age (60) for hired pre 7/1/2011 (65) for post 7/1/2011 hires	